

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning
Broadband Over Power Line Deployment by
Electric Utilities in California.

Rulemaking 05-09-006
(Filed September 8, 2005)

**CHIEF ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO RECUSE**

Californians for Renewable Energy, Inc. (CARE) filed and served a motion in this proceeding requesting the recusal of Assigned Commissioner Chong from participation in this proceeding.¹ For the reasons stated below, we deny the motion, and do not find any basis for the recusal of Commissioner Chong from this proceeding.

I. Standards for Recusal

As a general matter, a decisionmaker may be disqualified for having prejudged adjudicative facts. In a quasi-legislative proceeding, recusal is generally required only where the decisionmaker has an unalterably closed mind on matters critical to the disposition of the proceeding or where there is actual bias. A mere appearance of bias is generally not sufficient to require recusal. This proceeding is quasi-legislative.

¹ The full title of the motion, filed and served on March 28, 2006, is: Motion Seeking the Recusal of Commissioner Chong of Californians for Renewable Energy, Inc. (CARE).

II. There Is No Allegation That Commissioner Chong Has Prejudged the Facts in This Proceeding.

CARE has not alleged that Commissioner Chong has prejudged specific facts related to the BPL proceeding and thus is disqualified from a decisionmaking role.

III. There Has Been No Showing of an Unalterably Closed Mind Here, and That Cannot Be Inferred From Advocacy Positions Taken Over Two Decades Ago.

CARE has not alleged facts that show that Commissioner Chong has pre-formed an opinion about a matter critical to the disposition of this proceeding. Nor has it shown that if the Commissioner had any such opinion, it would prevent her from fairly weighing the record in this proceeding. In short, the moving party is far from alleging that the Commissioner has the kind of unalterably closed mind necessary to require recusal.

Rather, CARE objects to the fact that 13 years ago, she took a position on certain telecommunications issues that apparently differs from CARE's current interests in this BPL proceeding. More specifically, according to CARE, in 1993, Commissioner Chong, then an attorney representing certain telecommunications carriers, participated in a conference, and provided advice to the cellular phone industry regarding strategies for defending potential litigation relating to radio frequency emissions. (CARE Motion, p. 1.) According to CARE, this action shows that Commissioner Chong's interests are "those of the telecommunications industry not retail consumers." (*Id.*)

The fact that Commissioner Chong in 1993 took a position different from the position of CARE in 2006 is not a basis for recusal. The mere fact that Commissioner Chong, in her previous role as an attorney, expressed a position on

an issue relating to telecommunications does not require her recusal.

Commissioners are often, and properly, appointed because of, not in spite of, their expertise, past experience, and views on matters of public policy. Even if we assume, for the sake of argument, that the present viewpoint of Commissioner Chong can be inferred from the nature of her prior law practice or clients, that does not provide grounds for her recusal. Similarly, assuming arguendo that her past (or present) activities could create an appearance of impropriety, a mere appearance of impropriety is not a valid basis for requiring recusal of a decisionmaker; actual bias must be shown.

IV. CARE's Argument That There Is a Financial Interest That Requires Disqualification or Creates an Appearance of Impropriety Supporting Disqualification Is Unsupported.

CARE's motion also alleges that Commissioner Chong has an improper financial interest in the telecommunications industry because of her membership on the board of directors of Lightbridge, Inc., and her ownership of 10,000 shares of Lightbridge stock.²

According to Lightbridge's website:

Company Background

Lightbridge is a leading transaction processing company that businesses trust to manage customer transactions for greater profitability. Lightbridge adds value to fraud prevention, credit qualification, payment processing. Businesses use Lightbridge to make smarter decisions, deliver better services, ensure secure transactions, reduce costs and increase revenues and profits.

² Commissioner Chong's ownership of the stock was disclosed on her Statement of Economic Interests (known as Form 700) at the time she assumed office, as required by Govt. Code §§ 87200, et seq.

Lightbridge is comprised of 2 business segments. Our value-added solutions for successfully managing customer transactions include:

Payment Processing - Authorize.Net® IP-based payment processing services that enable merchants to securely authorize, settle and manage process credit card and electronic check transactions.

Telecom Decisioning - fraud prevention, credit qualification and identity verification products and services that enable businesses to manage risk, more easily find and keep the right customers, and optimize their lifetime value.

Experience You Can Trust

No company is better qualified than Lightbridge to help you create a trusted environment for managing customer transactions with confidence. Whether looking to manage risk, control costs, or drive new revenue from customer transactions, Lightbridge is the name you can trust.

Lightbridge:

Processes over 200 million online payments annually, worth \$20 billion, via the Authorize.Net payment gateway.

Is the transaction processing leader for U.S. wireless subscriptions, processing an estimated 40% of the country's annual wireless subscribers, equating to over 200 million applications cumulatively. (www.lightbridge.com, March 29, 2006.)

CARE has not shown that Commissioner Chong's affiliation with Lightbridge as a director or as a stockholder has anything to do with this BPL proceeding. It does not appear from Lightbridge's public webpage that it does any business or plans to do any business in the broadband over power line telecommunications arena. At most, CARE has shown that both Lightbridge and this proceeding relate to the telecommunications industry. CARE states that it perceives this holding to create an appearance of impropriety, but does not support that perception with any specific allegation. More significantly, CARE has failed to show how any decision in this proceeding (relating to the

deployment of broadband services over power lines) will have any financial impact on Lightbridge. Under the Political Reform Act, recusal is only required where there is a reasonably foreseeable material financial effect. (Government Code secs. 87100, 87103.)

In sum, Commissioner Chong's past and present connections to the telecommunications industry do not provide a basis for her recusal from this proceeding. CARE has not demonstrated the actual existence of bias or a disqualifying financial interest on the part of Commissioner Chong, and CARE's perception of an appearance of bias is not an adequate basis for her recusal.

IT IS RULED that Californians for Renewable Energy, Inc.'s motion for recusal of Commissioner Chong is denied.

Dated April 10, 2006, at San Francisco, California.

/s/ ANGELA K. MINKIN

Angela K. Minkin
Chief Administrative Law
Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Chief Administrative Law Judge's Ruling Denying Motion to Recuse on all parties of record in this proceeding or their attorneys of record.

Dated April 10, 2006, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.